

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 5, 2023

SEC - CLERK'S OFFICE
CORPORATE CONTROL CENTER

JOINT PETITION OF

AQUA VIRGINIA, INC.

2023 MAY -5 A 8:31
CASE NO. PUR-2023-00044

AND

GREAT BAY UTILITIES, INC.

For approval of a change in control
of all of the assets of a public utility

ORDER FOR NOTICE AND COMMENT

On April 5, 2023, Aqua Virginia, Inc. ("Aqua Virginia" or "Company"), along with Great Bay Utilities, Inc. ("Great Bay") (collectively, "Joint Petitioners"), by and through counsel and pursuant to the provisions of Chapter 5¹ of Title 56 of the Code of Virginia ("Code"),² completed the filing with the Virginia State Corporation Commission ("Commission"), of a Joint Petition for approval of the merger of Aqua Virginia and Great Bay into one corporation with Aqua Virginia as the surviving entity³ ("Joint Petition"). Specifically, Joint Petitioners seek authority for the acquisition by Aqua Virginia, and the disposition by Great Bay, of control of all of the assets of Great Bay, as well as the necessary authority to transfer the assets of Great Bay to Aqua Virginia pursuant to § 56-88.1 of the Code.⁴

¹ The Joint Petition states that it is being filed pursuant to Chapters 4 and 5 of Title 56 of the Code of Virginia. Joint Petition at 1. In consultation with Staff counsel, counsel for the Company stated that Joint Petitioners filed this case under both Chapters 4 and 5 of Title 56 out of an abundance of caution. However, since the Joint Petition proposes a true merger upon the close of which there will be no surviving affiliate, the Commission finds it appropriate to review this case pursuant to Virginia Code § 56-88.1 (Chapter 5) only.

² Code § 56-88 *et seq.*

³ Joint Petition at 1.

⁴ *Id.* at 3.

According to the Joint Petitioners, the proposed merger will permit more efficient financing and administration of water and wastewater service through one legal entity and allow Aqua Virginia to maintain rates at more reasonable levels in the longer term.⁵ Further, Joint Petitioners state that by bringing the Great Bay systems under Aqua Virginia, those systems will be subject to the full range of the Commission's public utility regulatory authorities without the exceptions now applicable to Great Bay under Title 56, Chapter 10.2 of the Code.⁶ Finally, Joint Petitioners indicate that the merger of the companies also facilitates increased efficiencies of operation, improves customer service, and allows more efficient and less costly oversight of the Great Bay systems.⁷

Per Joint Petitioners, following termination of the corporate existence of Great Bay, Aqua Virginia will acquire title, possession, and control of all the assets owned by and will directly serve all of the customers of Great Bay.⁸ Joint Petitioners represent that the merger contemplated herein will not change rates for the customers of any of the Joint Petitioners at this time.⁹ Until such time as Aqua Virginia proposes rate changes for customers of Joint Petitioners by separate application filed with the Commission, the Company will continue to charge the rates Great Bay currently charges its customers.¹⁰ Moreover, Joint Petitioners maintain that

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.* at 4. *See also*, Joint Petitioners' Response to Staff Data Request No. 2-7, in which Joint Petitioners confirmed that neither Great Bay's "rates or other terms and conditions" would change post-merger, until such time as Aqua makes any requests for same in its next general rate case.

¹⁰ *Id.* at 4

adequate service at just and reasonable rates will not be jeopardized, but rather enhanced, by the proposed transaction.¹¹ Finally, the Joint Petitioners request that the twenty certificates of public convenience and necessity currently held by Great Bay be amended to permit Aqua Virginia to serve in the territories currently served by Great Bay.¹²

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; Joint Petitioners should provide public notice of the Joint Petition; interested persons should have an opportunity to file comments on the Joint Petition and request a hearing; and the Commission's Staff ("Staff") should be directed to investigate the Joint Petition and file a report containing Staff's findings and recommendations ("Staff Report").

We also find that a Hearing Examiner should be assigned to rule on any discovery matters that arise during the course of this proceeding.

The Commission further finds that it is appropriate to extend the statutory deadline for this proceeding in accordance with Virginia Code § 56-88.1, from June 5, 2023, to September 5, 2023.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2023-00044.

¹¹ *Id.* at 3.

¹² *Id.* at 3-4.

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").¹³ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Office of the Commission Clerk, Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, the parties and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matter that may arise during the course of this proceeding.

(5) An electronic copy of the public version of the Joint Petition and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Joint Petitioners: John K. Byrum, Jr., Esquire and April M. Jones, Esquire, Woods Rogers Vandeventer Black PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219, John.Byrum@wrvblaw.com and April.Jones@wrvblaw.com, and

¹³ 5 VAC 5-20-10 *et seq.*

Mary McFall Hopper, Esquire, Essential Services, Inc., 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010, MMHopper@aquaamerica.com. Interested persons also may download unofficial copies from the Commission's website:

scc.virginia.gov/pages/Case-Information.

(6) Within three (3) business days of receipt of a notice of participation as a respondent, counsel for the Joint Petitioners shall serve upon the respondent a copy of the Joint Petition and supporting materials unless these materials have already been provided.

(7) On or before June 2, 2023, the Joint Petitioners shall cause the following notice to be published as display advertising (not classified) on one (1) occasion, in newspapers of general circulation throughout Great Bay's service territory:

NOTICE TO THE PUBLIC OF A JOINT PETITION BY
AQUA VIRGINIA, INC. AND GREAT BAY UTILITIES, INC.
FOR APPROVAL OF A CHANGE IN CONTROL OF ALL OF
THE ASSETS OF A PUBLIC UTILITY
CASE NO. PUR-2023-00044

On April 5, 2023, Aqua Virginia, Inc. ("Aqua Virginia" or "Company"), along with Great Bay Utilities, Inc. ("Great Bay") (collectively, "Joint Petitioners"), by and through counsel and pursuant to the provisions of Chapter 5 of Title 56 of the Code of Virginia ("Code"), completed the filing with the Virginia State Corporation Commission ("Commission"), of a Joint Petition for approval of the merger of Aqua Virginia and Great Bay into one corporation, with Aqua Virginia as the surviving entity ("Joint Petition"). Specifically, Joint Petitioners seek authority for the acquisition by Aqua Virginia, and the disposition by Great Bay, of control of all of the assets of Great Bay, as well as the necessary authority to transfer the assets of Great Bay to Aqua Virginia pursuant to § 56-88.1 of the Code.

According to Joint Petitioners, the proposed merger will permit more efficient financing and administration of water and wastewater service through one legal entity and allow Aqua Virginia to maintain rates at more reasonable levels in the longer term. Further, Joint Petitioners state that by bringing the Great Bay systems under Aqua Virginia, those systems will be subject to

the full range of the Commission's public utility regulatory authorities without the exceptions now applicable to Great Bay under Title 56, Chapter 10.2 of the Code. Finally, Joint Petitioners indicate that the merger of the companies also facilitates increased efficiencies of operation, improves customer service, and allows more efficient and less costly oversight of the Great Bay systems.

Per Joint Petitioners, following termination of the corporate existence of Great Bay, Aqua Virginia will acquire title, possession, and control of all the assets owned by and will directly serve all of the customers of Great Bay. Joint Petitioners represent that the merger contemplated herein will not change rates for the customers of any of the Joint Petitioners at this time. Until such time as Aqua Virginia proposes rate changes for customers of Joint Petitioners by separate application filed with the Commission, the Company will continue to charge the rates Great Bay currently charges its customers. Moreover, Joint Petitioners maintain that adequate service at just and reasonable rates will not be jeopardized, but rather enhanced, by the proposed transaction. Finally, Joint Petitioners request that the twenty certificates of public convenience and necessity currently held by Great Bay be amended permit Aqua Virginia to serve in the territories currently served by Great Bay.

TAKE NOTICE that the Commission may adopt findings and recommendations that differ from those appearing in the Joint Petition and supporting documents.

The details of these and other proposals are set forth in the Joint Petition. Interested persons are encouraged to review the Joint Petition and supporting exhibits for the details of these proposals.

The Commission entered an Order for Notice and Comment that, among other things, directed Joint Petitioners to provide notice of their Joint Petition and provided interested persons an opportunity to comment or request a hearing on the Joint Petition.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct that all pleadings, briefs, or other documents required to be served in this matter be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Confidential and Extraordinarily Sensitive Information

shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange delivery.

Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, the parties and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or Staff is impeded from preparing its case.

An electronic copy of the public version of the Petition and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for Joint Petitioners: John K. Byrum, Jr., Esquire, and April M. Jones, Esquire, Woods Rogers Vandeventer Black PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219, John.Byrum@wrvblaw.com or April.Jones@wrvblaw.com, and Mary McFall Hopper, Esquire, Essential Services, Inc., 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010, MMFHopper@aquaamerica.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

On or before July 5, 2023, any interested person may file comments on the Joint Petition by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments or by filing such comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00044.

On or before June 23, 2023, any interested person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at the address above or at: scc.virginia.gov/clk/efiling. Such notice of participation shall include the email addresses of such parties or their counsel.

Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent known; and (iii) the factual and legal basis for the action. Any organization, corporation, or governmental body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00044.

On or before June 23, 2023, any interested person or entity may file a request that the Commission convene a hearing on the Joint Petition with the Clerk of the Commission at the address above or at: scc.virginia.gov/clk/efiling. All requests for a hearing shall include: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All filings shall refer to Case No. PUR-2023-00044.

A copy of any notices of participation and requests for hearing shall simultaneously be sent to all counsel for Joint Petitioners electronically at the email addresses set forth above.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Comment, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The Joint Petition, the Commission's Rules of Practice, and the Commission's Order for Notice and Comment may be viewed at the Commission's website:
scc.virginia.gov/pages/Case-Information.

AQUA VIRGINIA, INC. AND GREAT BAY UTILITIES, INC.

(8) On or before June 2, 2023, Joint Petitioners shall serve a copy of this Order for Notice and Comment on the following officials, to the extent the position exists, in each county, city, and town in which Great Bay provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of

every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first-class mail to the customary place of business or residence of the person served.

(9) On or before June 16, 2023, Joint Petitioners shall file proof of the service required by Ordering Paragraphs (7) and (8) above, including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the Commission.

(10) On or before July 5, 2023, any interested person or entity may file comments on the Joint Petition by following the instructions on the Commission's website:

scc.virginia.gov/casecomments/Submit-Public-Comments or by filing such comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00044.

(11) On or before June 23, 2023, any interested person may participate as a respondent in this proceeding by filing a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) or at: scc.virginia.gov/clk/efiling. Such notice of participation shall include the email addresses of such parties or their counsel. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00044.

(12) On or before June 23, 2023, any interested person or entity may file a request that the Commission convene a hearing on the Joint Petition with the Clerk of the Commission at the

address set forth in Ordering Paragraph (10) or at: scc.virginia.gov/clk/efiling. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All filings shall refer to Case No. PUR-2023-00044.

(13) A copy of any requests for hearing and notices of participation simultaneously shall be sent to counsel for Joint Petitioners: John K. Byrum, Jr., Esquire and April M. Jones, Esquire, Woods Rogers Vandeventer Black PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219, John.Byrum@wrvblaw.com and April.Jones@wrvblaw.com, and Mary McFall Hopper, Esquire, Essential Services, Inc., 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010, MMHopper@aquaamerica.com.

(14) The Staff shall investigate the Joint Petition. On or before July 21, 2023, Staff shall file with the Clerk of the Commission a Staff Report containing its findings and recommendations on the Joint Petition and shall promptly serve a copy on all counsel to the Joint Petition and all respondents.

(15) On or before July 28, 2023, Joint Petitioners may file with the Clerk of the Commission any response in rebuttal to the Staff Report, any requests for hearing, and any comments filed by interested persons in this proceeding.

(16) All documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(17) Joint Petitioners shall respond to written interrogatories or requests for the production of documents within five (5) calendar days after the receipt of the same. In addition to the service requirements of 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.¹⁴ Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice.

(18) Finally, the Commission is extending the statutory deadline for this proceeding in accordance with Virginia Code § 56-88.1, from June 5, 2023, to September 5, 2023.

(19) This matter is continued.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹⁴ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2023-00044, in the appropriate box.